STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JOSHUA CAUSEY, KIAMBRE CAUSEY, STEFFON CAUSEY, GEOVANTE CAUSEY, JONATHON CAUSEY, and SUAVE HARRIS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ANDREA HARRIS,

Respondent-Appellant.

UNPUBLISHED
September 16, 2003

No. 245083
Oakland Circuit Court
Family Division
LC No. 99-623539-NA

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the order of the trial court terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent-appellant first contends that the trial court erred in determining that termination was not contrary to the best interests of the children.[1] A review of the evidence shows that termination of respondent-appellant's parental rights was clearly not contrary to the best interests of the children. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The psychologist who evaluated respondent-appellant and the children testified that respondent-appellant would not be able to adequately parent the children and, indeed, that even the most suitable caregiver would be taxed in ability to care for any of these children, who have severe emotional impairments, let alone all six. Testimony also indicated that any harm to the children from termination of respondent-appellant's parental rights was outweighed by the greater harm of returning them to respondent-appellant.

[1] Respondent-appellant pleaded no contest to the allegations of the petition for permanent custody, and does not argue on appeal that the trial court erred in finding that statutory grounds for termination were established by clear and convincing evidence.

Respondent-appellant next argues that the trial court erred in its determination that she failed to substantially complete the parent agency agreement. Respondent-appellant correctly notes that she had obtained suitable housing, participated in psychological evaluations, completed parenting classes, provided a drug screen, and visited with the children. But respondent-appellant was also unemployed and had no financial plan for the children other than their social security disability checks, as well as her own. Though she visited with the children, there was testimony that she was not able to properly parent the children during the visits. And though she admitted that the father of most of her children had sexually assaulted her since his recent release from incarceration, she testified that she was not sure she was going to end the relationship and that she planned to rely on him for help with child care. We find that the trial court, therefore, correctly concluded that respondent-appellant was unable to provide the children with the necessaries of life, including security, and did not clearly err in its determination that termination was not contrary to the best interests of the children.

Respondent-appellant also argues that the trial court erred in ordering petitioner to file the petition for permanent custody after the permanency planning hearing. If a trial court determines at the permanency planning hearing that a child should not be returned to the parent, MCL 712A.19a(5) directs the trial court to order the agency to initiate proceedings to terminate parental rights, unless the trial court finds that initiating the termination of parental rights is clearly not in the child's best interests. In this case the trial court determined that the children had been removed from respondent's care for approximately two years and respondent-appellant was still not in a position where the children could be returned to her. There is no indication that the trial court failed to properly follow the directive of MCL 712A.19a(5).

Respondent-appellant further asserts that the trial court erred in finding that petitioner had made reasonable efforts to reunite her with the children. However, the record does not support her allegations of petitioner's failure to provide services. Instead, the record demonstrates that respondent-appellant was provided numerous services over a long period of time and participated in only some of them. Therefore, the trial court did not clearly err in finding that reasonable efforts had been made to reunite the family.

Finally, respondent-appellant argues that she was denied the effective assistance of counsel at trial. The principles of ineffective assistance of counsel developed in criminal law apply by analogy to termination proceedings. *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002). To show ineffective assistance of counsel, a respondent must show that (1) counsel's performance was deficient, (2) the representation fell below an objective standard of reasonableness, and that (3) the respondent was so prejudiced as a result of the representation that it denied her a fair trial. *Id*. at 198. Proving prejudice means that the respondent must demonstrate that, but for counsel's errors, the result would have been different. *Id*. It is not enough to demonstrate merely that trial counsel followed an unsuccessful strategy. *Id*. at 199.

There is no indication from the record that respondent-appellant objected to representation by trial counsel or that she was unaware that he had previously represented another party in the case. There is also no indication that the prior representation in any way affected trial counsel's representation of respondent-appellant. Similarly, there is no evidence that by allowing respondent to plead no contest to the allegations counsel affected her ability to receive a fair trial. In fact, focusing on the best interests portion of the proceedings may have been a matter of strategy given the unlikelihood of respondent-appellant succeeding on the

merits of the statutory portion of the proceedings. We find that there is no reasonable probability that following a different strategy would have persuaded the trial court to reach a different conclusion in this case, and, therefore, respondent-appellant was not denied the effective assistance of counsel. See *Id*. at 199-200.

Affirmed.

/s/ Michael R. Smolenski
/s/ William B. Murphy
/s/ Kurtis T. Wilder